COMMUNITY COUNSEL

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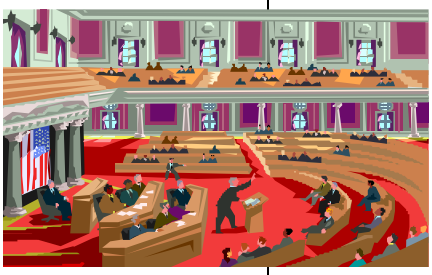
Recent Cases

- **Unit Owner must give Association enough information to make a meaningful review of the facts when deciding on request to permit a pet as a reasonable accommodation to a handicap.**
- **Suit for a pure bill of discovery does not permit a party to sue to see documents unrelated to identifying a party or determining that conditions to suing have occurred.**

SB 1196 – IT'S THE LAW ON JULY 1, 2010

SB 1196 (now called Chapter 2010-174, Laws of Florida) was signed on June 1, 2010. It is effective on July 1, 2010. It is 57 pages long and is but one of several bills impacting community associations that came out of the 2010 legislative session, although it can be characterized as the main bill. It has something good - and something bad – for just about everyone. Here are some highlights and low lights.



Condos – New elevator code requirements cannot be enforced for at least five years (assuming the elevator isn't replaced within that time). This is a help.

Condos – Buildings under 4 stories and with an exterior egress don't need to have a manual fire alarm system. This is a help.

Condos – Restrictions on rentals by amendment are now easier, except that amendments that prohibit rentals or that change the rental period or restrict how often rentals can occur still only apply to those owners who consent or who sell their units. This helps, but not a lot.

Condos and Coops – Owners are no longer required to insure their units or to have liability insurance to protect others unless required by the governing documents. This is a step backwards that could be a disaster.

Condos, Coops and HOAs – Exceptions from official records are expanded to exclude employee personnel records, member contact information other than that which is provided to receive official notices, security measures like passwords and software functionality. This is helpful.

Condos and Coops – Annual meeting and election procedures are corrected to fix errors made two years ago. Members delinquent on any obligation for 90 days are not eligible to serve. Elected directors must give a certification within 90 days after taking office that they have read the law and the governing documents. After 90 days a director who fails to so certify is suspended and can be replaced at least temporarily. This is helpful.

Condos and Coops – Fire sprinkler systems can't be required before the end of 2019, a five year increase. However, other engineered life safety systems now can be required immediately. A very mixed blessing.

Condos – Foreclosing lenders now are responsible for the lesser of 12 months assessments or 1% of the original mortgage amount. This is pyrrhic victory that will change nothing for most.

Condos, Coops and HOAs – Once an owner of a rented unit is delinquent the Association may demand rent from the tenant and may commence eviction if payment isn't forthcoming. Watch out, this one has hidden dangers.

Condos – The rights of delinquent owners to use common elements and to vote may be suspended during the period of the delinquency. This does not appear to permit shut-off of cable TV, something that would have been even more effective.

Condos – The "Distressed Condominium Relief Act" creates subclasses of bulk unit assignee and bulk unit buyer, both of whom look a lot like developers but are excused from most developer obligations. Despite its title there is no definition of what constitutes a distressed condominium. This is purely a developer relief act and it will be used to rip-off condo buyers, especially in buildings that are new construction or newly converted.

HOAs – Closed Board meetings to discuss personnel matters are permitted. This may be subject to abuse.

HOAs – Document inspection requests have to be sent by certified mail. This is helpful.

HOAs – Reserve provisions have been clarified. This is good news.

HOAs – Displays of flags are better regulated.

HOAs – Suspension of use rights for any reason, including delinquencies now require a due process hearing. This is a step backwards.

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RECENT CASE SUMMARIES

In **Hawn vs. Shoreline Towers Phase I Condominium Association, Inc.,** (No. 09-11797, U.S. App. Ct., 11th Cir., 9/22/09 Owner purchased a unit in Association in 2004. At the time Owner purchased the unit, there was a sign on the property that read "No Animals Allowed." Owner was aware of the sign and the community's no pet policy. In January, 2005 Owner notified Association by letter that he had acquired a puppy. In the letter, Owner referred to his puppy as his "pet" and "companion", but never as a service animal. Owner also recommended that Association change its no pet policy to permit owners to own a pet. In 2006, Owner send another letter to Association in which Owner claimed that he suffered from physical and mental disabilities that stemmed from a debilitating injury that caused pain and restricted mobility. Owner also stated that he had been robbed, kidnapped, and assaulted in the past by his friend's stepson who had been living in his unit while he was away on vacation. Although the person was subsequently arrested, Owner claimed that he had become afraid of living alone. This letter for the first time referred to his dog as a "service animal" and that the dog be exempted from the no pet policy. In response, Association sent Owner a letter requesting further information in order to consider Owner's request, including documentation supporting his disability claims and the qualifications of the physicians named in Owner's request. The letter concluded "*[w]hile the association sympathizes with your situation, at this time we must deny your request to keep a pet in your condominium unit*." In March, 2006 Owner sued Association seeking monetary damages and injunctive relief under the state and federal Fair Housing Acts. The trial court granted summary judgment in favor of Association on all of Owner's claims, finding that Owner failed to establish that Association knew of his disability, or that the requested accommodation was necessary; or that the "No Animals Allowed" sign evidenced discriminatory intent by Association. Additionally, the court held that Association's conduct failed to rise to a level that would constitute infliction of emotional distress. On appeal to the 11th Circuit Court of Appeals, Owner argued that his June, 2006 letter to Association was sufficient to create genuine issues of material fact about whether Association knew of his disability and the necessity of his requested accommodation. The appellate court disagreed, noting that a duty to make reasonable accommodation must be attended by a meaningful review of the facts, and did not simply spring from the disabled person's desire for the accommodation. Owner's refusal to comply with the Association's requests for reasonable documentation prevented it from conducting a meaningful review and, consequently, it could not have known of his disability or his need for a service animal. Therefore, the appellate court affirmed the district court's order for

In **Venezia Lakes Homeowner's Association, Inc., vs. Precious Homes at Twin Lakes Property Owner's Association, Inc.**, 35 Fla L.Wky D954b (Fla. 3rd DCA, 4/28/2010), Associations were adjacent homeowner association communities. Venezia contains two lakes, West Lake and East Lake. Venezia and Precious Homes entered into a cross-easement agreement by which Precious acquired an access easement to West Lake in exchange for payment, based on a calculation stated in the agreement, of thirty percent of the maintenance and security costs for the lake. In turn, Venezia agreed to provide to Precious "[*n]o later than forty-five (45) days prior to the end of each fiscal year. . . .the proposed. . . .budget for the next ensuing year which shall include as a separate category, the Lake Operating Expenses*." Each year, Venezia provided Precious Homes with the approved budget for the upcoming fiscal year. Precious Homes believed that Venezia combined the operating expenses for West Lake and East Lake, and therefore improperly charged Precious Homes for maintenance expenses to maintain East Lake. Precious Homes requested a copy of the service contracts related to West Lake and Venezia refused to provide the contracts. As a result, Precious Homes filed a complaint for a pure bill of discovery, alleging that it is being overcharged by Venezia for the cost of maintenance and security to West Lake. Precious Homes sought to obtain certain documents related to the maintenance and security expenses for West Lake. Venezia filed its answer and affirmative defenses in which it denied any overcharging and stated that the requested documents do not contain sufficient detail to permit Precious Homes to make any assessment of the charges. Both parties sought summary judgment in the trial court. Precious Homes argued that the documents were necessary only to determine if it had been overcharged. Venezia argued that the complaint did not meet the technical requirements for a pure bill of discovery. The trial court granted Precious Home's motion and ordered Venezia to provide the documents. On appeal, the Third District Court of Appeal noted that a pure bill of discovery "*may be used to identify potential defendants and theories of liability and to obtain information necessary for meeting a condition precedent to filing suit*." The instant case did not meet these technical requirements, and therefore reversed the trial court's order and remanded the case to the trial court to grant Venezia's motion for summary judgment.

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